

801.1(c)

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, November 04, 2010 11:26 AM
To: Verne, B. Michael
Subject: HSR question

Mike,

I have a transaction where 5 separate entities are being purchased by a single acquiring person. The entities have overlapping shareholders (although the overlap is not 100%), and in each instance one of the shareholders is a revocable trust that has 3 grantors (I will refer to them herein as A, B and C). Under 801.1(c)(4), A, B and C would presumably be deemed to hold the voting securities and assets of the trust.

In the typical case, the trust holds 35%-40% of the acquired entities' shares, with individuals A and B each holding an additional 15%-30% of the shares, but not necessarily in equal amounts. As I read the HSR rules, it would seem that A and B would be the UPEs of each acquired entity based on their 15%-30% direct shareholdings and the 35%-40% shareholding of the trust that A and B (and C) are deemed to hold under 801.1(c)(4). The result in some cases is that A and B will be deemed to each hold greater than 50% of an entity. This result strikes me as somewhat bizarre, thus my request for confirmation that I am interpreting the rules correctly.

To conclude the analysis, the voting securities of each acquired entity would be valued at less than \$20 million, yet 801.14 would presumably require us to aggregate the value of those voting securities since they are being acquired from common UPEs (A and B). One entity is a foreign issuer without U.S. assets or sales (thus 802.51 should apply to exclude it from the valuation determination), but the other entities do not appear to come within any exemption.

Any assistance you can provide on this issue would be greatly appreciated. Thanks.

Regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Yes – only in the world of wacky HSR math can you have more than 100% of something. Your conclusions are correct:

A and B are each deemed to hold 15%-30% and the trust's 35%-40%, so each is an acquired person and the value of the voting securities of all of the entities (except the exempt foreign issuer) would be aggregated. C only holds the trust's 35%-40%, and so is not an acquired person.

B
11/7/10